



UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 11

Fish and Richardson  
225 Franklin Street  
Boston, MA 02110

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**NOV 10 2003**

**OFFICE OF PETITIONS**

In re Application of	:	
Michael Fabry	:	
Application No. 09/757,338	:	ON PETITION
Filed: January 9, 2001	:	
Attorney Docket No. 02103-399001	:	

This is a decision on the petition under 37 CFR 1.137(a), filed October 9, 2003, which is being treated as a petition to withdraw the holding of abandonment under 37 CFR 1.181.

The petition is **GRANTED**.

Petitioner states that the non-final Office action, which was mailed on February 14, 2003, was not received. A review of the application file discloses that the Office action was properly addressed to petitioner, but was returned to the USPTO for an unknown reason. As such, the correspondence did not, in fact, reach petitioner.

MPEP 707.13 states:

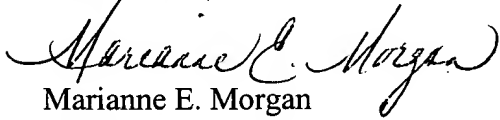
“Office actions are sometimes returned to the Office because the United States Postal Service has not been able to deliver them. The examiner should use every reasonable means to ascertain the correct address and forward the action again, after stamping it “remailed” with the date thereof and redirecting it if there is any reason to believe that the action would reach applicant at such new address. If the Office action was mailed to an attorney, a letter may be written to the inventor or assignee informing him or her of the returned action. The period running against the application begins with the date of the remailing. *Ex parte Gourtoff*, 1924 C.D. 153, 329 O.G. 536 (Comm’r Pat. 1924).»

In view thereof, the appropriate procedure in the instant application was for the Office to remail the Office action restarting the period for reply. Since the Office action was not remailed following the procedure outlined in MPEP 707.13, this application is not deemed abandoned for failure to reply to the non-final rejection.

Accordingly, petitioner may request a refund of the \$110 petition fee by writing to the Office of Finance, Refund Section. A copy of this decision should accompany such a request.

The application file is being forwarded to Technology Center 2600 for further examination.

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 306-3475.

A handwritten signature in cursive script, reading "Marianne E. Morgan".

Marianne E. Morgan  
Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Examination Policy